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OFFICE OF PETITIONS

In re Application of
Manish Mangal et al.
Application No. 10/067,080
Filed: February 4, 2002
Attorney Docket No. 1844
Title: METHOD AND SYSTEM FOR
SELECTIVELY REDUCING CALL-SETUP
LATENCY THROUGH MANAGEMENT
OF PAGING FREQUENCY

DECISION ON PETITION
UNDER 37 C.F.R. §1.137(f)

This is a decision on the petition filed on August 25, 2003, pursuant to 37 C.F.R. §1.137(f), to revive the above-identified application.

A grantable petition pursuant to 37 CFR 1.137(f) must be accompanied by:

- (1) Notification of the filing of an application in a foreign country or under a multinational treaty that requires 18 month publication¹;
- (2) The petition fee as set forth in 37 C.F.R. § 1.17(m), and;
- (3) A statement that the entire delay in filing the notice from the date that the notice was due under 35 U.S.C. §122(b)(2)(B)(iii) until the date the notice was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

¹ See PTO/SB/36 and paragraph on PTO/SB/64a for further information. Both may be downloaded at <http://www.uspto.gov/web/forms/index.html>.

On February 6, 2003, a Notice of Rescission of Nonpublication Request was filed with the Office. Unfortunately, notification of the filing of a foreign or international application did not accompany this filing.

Petitioner states that the instant nonprovisional application is the subject of an international application that was filed on January 30, 2003. However, the United States Patent and Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an international application.

In view of the above, this application became abandoned pursuant to 35 U.S.C. §1.22(b)(2)(B)(iii) and 37 C.F.R. §1.213(c) for failure to timely notify the Office of the filing under a multilateral international agreement, that requires publication of applications 18 months after filing.

The petition is **GRANTED-IN-PART**.

Concerning the petition under 37 C.F.R. §1.137(f), the petition is **GRANTED**.

37 C.F.R. §1.137(f) requires a statement that the entire delay in filing the notice from the date that the notice was due under 35 U.S.C. §122(b)(2)(B)(iii) until the date the notice was filed was unintentional. Since the statement contained in the instant petition varies from the language required by 37 C.F.R. §1.137(f), the statement contained in the instant petition is being construed as the statement required by 37 C.F.R. §1.137(f) and petitioner must notify the Office if this is not a correct interpretation of the statement contained in the instant petition.

Petitioner has submitted the notification of an international filing, paid the petition fee, and has made a statement which is being construed as the proper statement of unintentional delay.

The instant petition has been found to be in compliance with 37 C.F.R. §1.137(f). Accordingly, the failure to timely notify the Office of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. §122(b)(2)(B)(iii) and 37 C.F.R. §1.213(c) is accepted as having been unintentionally delayed.

The portion of the petition which request that the petition fee be waived is **DISMISSED**, as the payment of the required petition fee is a statutory prerequisite to the filing of a petition to revive under 37 C.F.R. §1.137, and cannot be waived. See M.P.E.P. 711.03(c)(III)(B)²

² "...[T]he payment of a petition fee to obtain the revival of an abandoned application is a statutory prerequisite to revival of the abandoned application and cannot be waived. In addition, the phrase '[o]n filing' in 35 U.S.C. §41(a)(7) means that the petition fee is required for the filing (and not merely the grant) of a petition under 37 C.F.R. §1.137. See H.R. Rep. No. 542, 97th Cong., 2nd Sess. 6 (1982), *reprinted in* 1982 U.S.C.A.N. 770 ('[t]he fees set forth in this section are due on filing the petition'). Therefore, the Office: (A) will not refund the petition fee required by 37 CFR 1.17(l) or 1.17(m), regardless of whether the petition under 37 CFR 1.137 is dismissed or denied."

After this decision is mailed, the application will be forwarded to Technology Center 2600 for further processing.

It is noted that the address listed on the petition differs from the address of record. The application file does not indicate a change of correspondence address has been filed in this case, although the address given on the petition differs from the address of record. If petitioner desires to receive future correspondence regarding this application, the change of correspondence address must be submitted. A courtesy copy of this decision will be mailed to petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary. Petitioner will not receive future correspondence related to this application unless Change of Correspondence Address, Patent Form (PTO/SB/122) is submitted for the above-identified application. For petitioner's convenience, a blank Change of Correspondence Address, Patent Form (PTO/SB/122), may be found at <http://www.uspto.gov/web/forms/sb0122.pdf>.

Telephone inquiries concerning *this decision* should be directed to the undersigned at (703) 305-0011.



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